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Chancellor's Testimony Before the State Senate Finance Committee and Assembly Ways and Means Committee

02/02/2010

INTRODUCTION

Good morning Chairman Kruger, Chairman Farrell, and Vice Chair Krueger. Greetings also to Education Committee Chairs Oppenheimer and Nolan.

Thank you for giving me this opportunity to comment on the 2010-2011 Executive Budget Request. I am joined today by the Department of Education's Chief Operating Officer, Photeine Anagnostopoulos, and by Lenny Speiller, the Executive Director for the Office of Public Affairs.

I come before you today mindful that we face great challenges—as a nation, as a State, and as individual, local communities. While our economy has begun to show signs of improvement, our families continue to struggle and our State continues to face tough choices. Although these challenges and struggles are real, and full recovery seems far on the horizon, I am optimistic that we can find positive solutions so that our school children do not bear undue burdens in these difficult times.

I am optimistic because our State has faced tough challenges in the past, and time and again we have overcome those challenges and emerged stronger on the other side. In the eight years since the Mayor took control of the schools, this Legislature has funded education at historic levels in the good times, restored hundreds of millions of dollars in rough times, and twice passed mayoral control. These measures, and many others, have made a real difference in the lives of our kids and also helped make New York City a national model for education reform. I thank you for your partnership in these efforts.

As you know, all New York City agencies have endured several rounds of belt-tightening over the past two years. In facing these challenges, we have implemented budget reductions equitably across our system of more than 1,500 schools, while continuing to direct relatively more funding to support our highest-need students, including English language learners, special education students, and students who are struggling academically.

As you now determine how to achieve necessary cuts to education budgets across the State, I ask you to exercise similar leadership and fairness. If the budget is implemented as proposed, you can be sure that City students will feel the pain of these cuts in the loss of high-quality teachers from their classrooms. Specifically, as Mayor Bloomberg testified last week, the Governor's budget would potentially result in 8,500 fewer teachers working in our schools come September.

Today, I will elaborate on the Mayor's testimony by providing some additional detail about our Department's fiscal situation and will then discuss several specific ways you can help mitigate the impact of the budget shortfall on our students so that we can continue to build on the significant progress they have achieved.

OUR BUDGET SITUATION

When you consider the combined effect of reductions from the State, changes in the City's funding, and increases in non-discretionary spending, we are looking at a preliminary budget gap of \$1.2 billion for the coming school year.

The Governor's proposal effectively reduces the New York City Department of Education's 2010-2011 budget by \$600 million through a combination of direct cuts and cost shifts. We urge you to seriously reconsider the magnitude of this proposed reduction as it would have a dire impact on our students.

Under the plan, we would receive \$442 million less in State funding next year compared to this year, excluding changes in expenditure-based allocations such as transportation and food. You will notice that our analysis shows a cut greater than the \$418 million proposed in the executive budget. This is because the Governor counts school construction aid against the cut in formula-based school aid that the City is receiving. This type of accounting is misleading. Building aid and operating aid are not interchangeable. You cannot count building aid as operating aid any more than it would be acceptable for us to apply those funds to cover teacher salaries.

Beyond that, we are also deeply concerned that the Governor's executive budget calls for freezing foundation aid at its current level. If implemented, we will not receive any new dollars for the 14,000 additional students who are now attending our public schools, and that would represent another effective cut of more than \$80 million.

And, as the Mayor explained during his testimony last week, the Governor's budget would also shift payment for mandated summer school special education services from the State to the City. Since our schools are under Federal mandate to provide these services, we cannot eliminate those payments. This cost shift will effectively cut the City's education budget by at least \$51 million and as much as \$78 million.

We're also extremely disappointed that full funding for student MetroCards was not restored in the proposed executive budget as the Governor had previously promised. This year, the State has dramatically cut its contribution to the costs of funding student MetroCards, which could force families—including many low-income families—to pay thousands of dollars out of their own pockets toward school transportation costs. This is simply unfair given that the State provides aid toward student public transportation in other districts. New York City is upholding its end of the longstanding agreement to share the costs of funding student MetroCards, and the State must contribute its full share as well.

Like last year, we will also experience significant increases in contractual costs and other mandated expenses for next year. Based on our preliminary estimates, we anticipate that the net increase in our nondiscretionary costs will be \$600 million, largely due to increased special education expenditures and teacher compensation costs.

Additionally, the Governor's proposal without warning reduces our current year budget by \$30 million in the middle of this school year by moving the deadline for adjusting claims for mandated special education services from June 2010 to November 2009. We don't have extra revenue in our budget to plug this hole. If this plan is implemented, we will be forced to pull back money from our schools when we just managed to protect them from an anticipated mid-year cut.

As you know, Governor Paterson has also proposed eliminating State revenue sharing exclusively for New York City, while other counties would only experience cuts between one and five percent—this is utterly unfair. Since education spending currently makes up 34 percent of the City's total budget, eliminating revenue sharing for the City will inevitably reduce available funding for City schools in both the immediate term and for years to come.

In total, the combination of cuts in State funding, cost shifts from the State to the City, and increases in uncontrollable costs results in a budget hole of nearly \$1.2 billion for the 2010-2011 school year and a midyear cut of \$30 million to the current year's budget. I ask you to eliminate—or at the very least reduce—the size of our cut and the impact of expensive cost shifts. We must address the shortfall now because, unlike last fiscal year, there will be no stimulus money left to plug additional funding gaps later on this year.

As in the past, we will continue to work very hard to shield our schools from budget hardship wherever possible. While school budgets hold the lion's share of our Department's overall discretionary funding, between fiscal years 2008 and 2010, we have reduced central office spending by more than 16 percent compared to an eight percent reduction in school budgets. This reduction of \$116 million at our central offices follows a five-year effort to slash administrative spending that already drove more than \$350 million in savings to our schools and classrooms. Today, the Department's central and field operating costs comprise only three percent of our total budget.

Just last week, Mayor Bloomberg and I worked together to identify a combination of new savings in our operating budget that allowed us to roll back an anticipated mid-year budget cut that would have jeopardized schools' ability to maintain many important programs and resources. I recently notified DOE managers and other non-unionized staff that I would fund only one third of the increase in their compensation that had been budgeted by the City. This move limited raises to two percent for each of two years, with a cap of about \$2,800. Subsequently, the Mayor proposed new compensation agreements, similar to the managerial change, with the United Federation of Teachers and the Council of School Supervisors and Administrators that—in combination with the savings from the lower managerial increase—would save \$160 million this year and \$357 million next year.

And we fully expect to make further cuts to our central and field budgets, including a five percent head count reduction planned for this fiscal year. This follows the eight percent headcount reduction that we took over the last two years. But nearly half of our agency's \$22 billion budget cannot be reduced because of fixed costs like pensions, debt service, special education mandates, energy, and leases. Principals manage \$8 billion dollars of our budget at the school level, and more than 85 percent of those dollars go for salaries, mostly for teachers.

What does this mean? It means that we have no choice but to cut back on core school operations to fill next year's budget hole.

If the Governor's budget is implemented in its current form, and without accompanying legislative reforms that could blunt the impact of the proposed cuts, we will have to eliminate 8,500 teaching positions, representing approximately 15 percent of our core teachers who teach math, English, science, and social studies. We will be forced to execute layoffs strictly on the basis of seniority, without regard to the relative effectiveness of those teachers in boosting student achievement. The prospect of State layoffs resulting from such a huge cut in State funds adds urgency to our proposed reform of the "last in, first out" teacher lay off policy. Clearly, the only thing worse than having to lay off teachers would be laying off great teachers instead of failing ones.

It is important to note that we may have no other choice than to layoff additional school-based staff as a result of increasing costs.

PROPOSED SOLUTIONS

In addition to seeking more funds, we have come here today in hopes of avoiding that scenario, with ideas—some old and some new—that could help protect our kids in these difficult times. Clearly the magnitude of the reduction must be eliminated if we are to avoid the disruption to learning that the layoff of 8,500 teachers would produce. I will present to you some solutions and fundamental reforms that would generate significant savings for our schools without incurring any costs to the State.

As you approach this budget, we ask you to adhere to three core principles to ensure that our students continue to get the top-notch education that they need and deserve. These are:

1. Achieving "smart" savings.
2. Ensuring access to every dollar.
3. Maximizing spending flexibility.

Let's discuss our first principle.

The need for layoffs resulting from State cuts underscores the importance of reforming State laws to make rational hiring and firing practices in our schools. As we face the possibility of cutting 8,500 teaching positions, current State law mandates that teachers be let go in order of reverse seniority within teaching licenses. This "last in, first out" requirement fails to recognize school needs as well as differences in teacher effectiveness and their real impact on the lives of our students. We need you to empower us to evaluate teachers objectively and transparently, and then to make personnel decisions based on what matters most: success in the classroom.

Additionally, a layoff scenario based on seniority and not merit means more teachers will ultimately lose their jobs, resulting in a smaller teaching force and thus, larger class sizes.

"Last in, first out" also creates the potential for operational chaos: in the event of severe budget cuts, as would be the case with this budget, resultant layoffs would trigger a chain reaction of seniority-based "bumping" throughout the City's schools. We would be forced to let go of our newer teachers and the remaining teachers would be shuffled from school to school without regard for their skills or strengths.

The ensuing disarray would be most damaging to our highest-needs students and schools. A 2008 study in the *Journal of Policy Analysis and Management* found that the teacher quality gap between our lowest- and highest-poverty schools has narrowed significantly during the last decade, largely due to the hiring of more successful newer teachers. Some of the teachers who are producing outstanding outcomes for our highest-needs students are the very individuals who would be forced out of the system and out of a job.

For example, we may have to pull a math teacher who is achieving tremendous results helping overage students get back on track from his classroom and replace him with a teacher who struggled with that population in her previous school. Not only is this

nonsensical, but it would also have a dangerously negative impact on student learning and may discourage some of the best and brightest from becoming New York City teachers in the first place.

We therefore urge you to amend Section 2588 of the Education Law to provide school districts the authority to establish an orderly process for dealing with employee layoffs and to give principals final authority over which personnel are let go based on assessments of needs, skill, and quality, and following the recommendations of their School Leadership Teams.

Further reform to this section of the law could also remediate the Absent Teacher Reserve Pool ("ATR Pool"). Right now, when tenured teachers are excessed for any reason, they are placed in the ATR pool—and remain on the DOE payroll indefinitely. Many ATR teachers quickly find jobs elsewhere in the system, but some remain in the pool for years without being hired. There are currently more than 1,100 teachers in this pool, at a total annual cost of more than \$110 million to taxpayers. Almost half of them have been in excess for more than six months.

The school system cannot continue spending so much money on an indefinite and unconditional unemployment benefit at a time when it is struggling to maintain vital programs and services in our schools. This is even truer when you consider that a 2008 study conducted by the New Teacher Project found that more than half of ATR teachers hadn't applied to a single vacancy through the City's online hiring system. Other districts—like Chicago—have a one-year time limit for displaced teachers, allowing for the full termination of personnel after a year "in excess" at full salary. We urge you to adopt a similar policy in New York.

We also need your help to reform the so-called "rubber rooms" by enacting legislation to change the absurdly expensive and time-consuming process of firing teachers charged with incompetence or misconduct. Current State education law establishes a protracted process for terminating a teacher. While this process is intended to conclude within 60 days after a teacher is removed from the classroom, cases often drag on for years, during which teachers continue to receive full pay. We're still paying teachers in New York City who have been in the rubber room for as long as seven years. These are taxpayer dollars that could otherwise pay the salaries of 370 additional teachers, directly benefiting our students and schools.

On Sunday, the New York Post ran a front-page story about a teacher who has been reassigned to the rubber room for more than seven years. He's a tenured teacher at the very top of the pay scale who has not stepped into a classroom since 2001 because I believe he poses a risk to the safety and well being of our students. In the event of layoffs, I wouldn't be able to get rid of this teacher—he'd be able to keep his job and his \$100,049 salary based on his seniority alone. Instead, I'd be forced to lay off other teachers so this reassigned teacher can continue showing up each day to a rubber room, collecting a paycheck and adding to his pension.

We urge you to streamline the 3020-a process, enabling faster resolution for teachers who are ultimately reinstated and should be in the classroom, while simultaneously allowing principals greater latitude to remove misbehaving and incompetent teachers so long as they demonstrate that these decisions are reasonable and not arbitrary. Streamlining the 3020-a hearing process would reduce the time teachers spend in rubber rooms and, in turn, reduce associated costs, which currently reach more than \$30 million annually.

I do also want to echo the Mayor's commendation for the Governor's plan to let the City create a sinking fund for principal on federally-subsidized school construction bonds. The resultant reduction in borrowing costs would permit us to build and repair more City schools.

I want to propose two similarly smart ideas that would save money without cost to the State. The first is eliminating the Board of Education Retirement System and merging its members into the New York City Employees Retirement System and the Teachers Retirement System, a move that would save the City approximately \$8 million annually. The second is extending the Wicks Law exemption to the Education Construction Fund (ECF). The ECF does the same work as the School Construction Authority, but with a mixture of private dollars that are donated for the purpose of school construction. By lowering the cost of construction, we can free up more money to be used for further construction projects needed in our schools today.

Moving on to principle two: ensuring access to every dollar.

In tough times, we simply cannot afford to leave any available funding on the table. As you know, President Obama and United States Education Secretary Arne Duncan recently issued an unprecedented challenge to the education establishment by launching its "Race to the Top" competition. Race to the Top provides a strong financial incentive to bring our schools into the 21st century by implementing common sense reforms that will put more students on the path to success.

Last month, New York State submitted an application for as much as \$700 million in federal Race to the Top aid—funds which are needed more than ever given current economic challenges. While we support the State's efforts to raise academic standards—which accounts for 14 percent of the State's application—we were disappointed that key actions that would have made our application more competitive were not taken. As a result, our State's three million school children might miss out on much-needed funding.

The necessity of lifting the State's charter school cap is at this point indisputable. Several recent studies have demonstrated that New York City's charter school students consistently outperform their peers in district schools and are a model for other districts across the nation. And demand for seats in the City's existing charter schools far outpaces available supply, with more than 35,000 children on charter school waitlists. While I would have preferred to resolve this issue in time to include it in the State's first round Race to the Top application, we must nonetheless work to raise the cap within the current legislative session without any provisions that would stymie the growth of charter schools—provisions that are clearly at odds with the goals and guidelines of Race to the Top. This effort will improve our competitiveness in future Race to the Top rounds. More importantly, it's the right thing to do for our children.

Another way you can ensure that we achieve maximum benefits from available funding is to permit the City to use a portion of universal pre-Kindergarten funds to pay for part of the cost of our current full-day pre-K programs and to open additional full day programs where needed. But last year, as in years past, we left more than \$25 million of unused pre-K funds on the table. With families struggling to maintain their jobs and the unemployment at 10 percent, it is important we provide families with full-day pre-K options. At the same time, we must maximize all available funds to cover the cost. Currently, we pay for our full-day programs, covering the hours beyond the two-and-a-half-hour half-day period, by cobbling together various funding streams. Facing an effective State cut of \$600 million and another \$600 million in uncontrollable expenses, we ask that for next year we be able to utilize the full universal pre-K allocation to defray the costs of existing full day pre-K programs and to expand full-day pre-K to better serve our families.

We also believe the City and the State can save millions of dollars in special education costs. First, I ask you to consider revising Section 4403 to allow parents of preschool special education students to receive reimbursements for using their own transportation instead of having these children ride buses. This change would save \$30 million for the City and the State. Next, I

request that you freeze the tuition rates paid to special education providers for Preschool Special Education and Contract schools for a savings of \$28 million and \$21 million for the City and State, respectively.

Lastly, I urge you to finalize the State Plan Amendment for Medicaid for school districts so that we can begin implementing the new requirements and realize all possible funding available to us under Medicaid. New York State has been unable to file Medicaid claims for school districts for new services since July 2009. Other states have already modified their Medicaid programs through successful negotiation with the Centers for Medicare and Medicaid Services, and New York should establish a timetable for doing the same. We are currently developing a new data system that will greatly improve our ability to document and create accurate, complete, and timely submissions for Medicaid reimbursement. By working together, the City and the State can ensure that we have access to tens of millions of dollars—possibly more than \$100 million—to reimburse the City for our a significant portion of our Medicaid costs.

Let me now talk about the third and final principle, flexibility.

Giving school systems and school leaders more flexibility in how they can use their budgets is also more crucial than ever. In a universe of increasingly limited resources, we simply must empower our principals with the maximum flexibility over available funding so they can make the best possible choices for the needs of their particular schools and students.

I would like to thank the Governor for proposing a moratorium on unfunded special education mandates and a repeal of special education reporting requirements that are duplicative with federal laws. These steps go a long way in reducing the administrative burden associated with State programs, leading to more cost-effective and efficient procurement processes.

Following the Governor's direction, you could help improve flexibility in spending for our schools and our entire district by providing relief from State mandates that are not required by the Federal IDEA. The Legislature and the Board of Regents should work to modify Section 4403 of the Education Law that establishes an arbitrary minimum level of special education services such as speech therapy and sets the maximum student caseloads for special education service providers.

I want to be clear: I am not talking about diminishing the quality of services that our students need. Rather, I'm calling for enhanced local flexibility to make the decisions that impact our classrooms. And allowing more flexibility will not cost the State anything, but it will put more money into our schools where it's most beneficial to our students.

In addition, other districts around the State have the ability to add between one and three students to special education classes with poor attendance. New York City is not allowed to do this. This exception should be lifted. These decisions should be based on the individual needs of students and schools rather than across-the-board rules.

Finally, I ask you for greater flexibility in using Instructional Aid Materials money. It should be up to local school districts to determine the best way to spend funding from the three Instructional Materials Aid programs: Textbook Aid, Computer Hardware, and Computer Software Aid. This consolidation carries no cost for the State or school districts, but would allow school leaders to use their resources even more wisely by giving them the flexibility they need to make the smartest decisions for their schools.

CONCLUSION

At a time when funds are scarce, it is critical that we work together to protect our students and schools against the worst effects of ongoing economic uncertainty. As a Department, we have made every effort to reduce administrative expenses before cutting funding at the school level, and those cuts that were necessary were applied equitably across schools.

We ask that the cuts to our schools—both direct and indirect—be reduced to the lowest level possible. We also brought you a variety of reform proposals that would significantly help our bottom line without incurring costs to the State's budget.

Since the Mayor took office, our students have made historic academic gains in math and reading, and our graduation rate, which had long been stagnant, has increased by more than 15 points. Thousands more students are now graduating each year with the skills they need to compete in the 21st-century economy.

Despite enduring several rounds of budget cuts since 2007, our progress has continued unabated, demonstrating our careful stewardship of every dollar, along with the exemplary management skills of our principals and the hard work of our dedicated teachers and students.

All of us want to keep this progress going and to do everything possible to shield our students from potential harm. Please join me in making our difficult budget situation as tolerable as possible for our students.

Thank you for your time and attention and I welcome your questions.